

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DONNIE JACK**

Claimant

VS.

**CUSTOM CAMPERS, INC.**

Respondent

Self-Insured

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Docket No. 225,189

**ORDER**

Respondent appeals from a preliminary hearing Order. The Order, dated December 2, 1999, granted claimant's request for post-award medical treatment.

**ISSUES**

Did claimant's injury arise out of and in the course of employment? Respondent argues claimant's request for medical treatment should be denied because claimant suffered an intervening accidental injury at home while walking down stairs.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant injured his back while working for respondent in 1996. Claimant underwent surgery and in 1998 settled the workers compensation claim relating to the injury, leaving open the right to review and modify and the right to future medical treatment. Claimant continued to have some problems with his low back but in July 1999 experienced a significant increase in the symptoms as he walked down his stairs at home.

The ALJ granted claimant's request for additional medical treatment and the Board agrees. Once an employee suffers a compensable injury, "subsequent progression of that condition remains compensable under the Kansas Workers Compensation Act so long as the worsening is not shown to have been produced by an independent nonindustrial cause." *Nance v. Harvey County*, 263 Kan. 542, Syl. ¶ 3, 952 P.2d 411 (1997). In *Burbank v. U.S.D. #259*, WCAB Docket No. 223,983 (December 1997), the Board reviewed an

appellate court decision concerning what constitutes a new accident. The Board described the test as follows:

Examination of the facts of these cases suggests that a "separate accident" can logically be defined as an accident involving independent trauma, i.e., trauma independent from the original injury, as a cause of the new injury. In the Stockman case, for example, the claimant tossed a tire into the trunk of a car. Similarly, in Wietharn, claimant's knee gave way under the stress of lifting 60 pounds. In contrast, the Gillig case involves a claimant who merely stepped down from his tractor. There was no separate trauma apart from ordinary use of the leg. The injury from the knee giving way was treated as a compensable consequence of the original injury.

In this case the evidence contains reference to what might be considered independent trauma to claimant's back in the form of missing a step or twisting on the stairs. But claimant's testimony is, and the Board finds, that he did not miss a step, he simply turned at the landing as he went down the stairs. These facts required that we place the case on one side of a fine line. Although a close question, we agree with the conclusions of the ALJ that the facts as currently known indicate claimant's need for medical treatment was a direct and natural result of the original compensable injury and the order for medical treatment should, therefore, be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on December 2, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
John I. O'Connor, Pittsburg, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director